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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/737,034	12/15/2003	S. Curtis Nye	15499.377.3	4762
22913	7590	07/28/2005		
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			EXAMINER CHAMBERS, MICHAEL S	
			ART UNIT	PAPER NUMBER
			3711	

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/737,034

Applicant(s)

NYE ET AL.

Examiner

Mike Chambers

Art Unit

3711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 December 2004.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-27 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ebstein et al (3970304). Ebstein discloses

a backboard including a top, a bottom and a front and a rear (12); an elongated support that is sized and configured to position the backboard above a surface; a backboard support assembly connecting the backboard to the elongated support; and a goal support assembly including a rim (15) and a support member (un-numbered flange from rim (15) in fig 1) with a first end that extends substantially beyond a plane that is centrally aligned with the front of the backboard and is attached to the rim and a second end that extends substantially beyond a plane that is generally aligned with the rear of the backboard, an intermediate portion of the support member of the goal support assembly being attached to the backboard support assembly at an attachment point that is at least substantially behind the a plane that is generally aligned with the front surface of the backboard (fig 1).

As to claim 8 : Ebstein discloses a backboard that can be adjusted (fig 1, item 50,52):

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebstein et al (3970304) in view of Miller (3365196). Ebstein discloses the elements of claim 2 (fig 1), however it fails to clearly disclose the use of a resistance mechanism. Miller discloses the use of a resistance mechanism (fig 6, un-numbered spring on item 36). Various rim assemblies are well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the rim assembly of Miller with the apparatus of Ebstein in order to provide a more dynamic goal and enjoyable game for the player. The mechanism would naturally be connected to the goal support assembly.

As to claim 6 : Miller discloses two arms (fig 1).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ebstein as applied to claim 1 above, and further in view of Official Notice. Official Notice is taken that the use of portable basketball systems is well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed a portable system with the apparatus of Ebstein in order to easily move and store the system.

Claims 9, 11-16, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ebstein et al (3970304) in view of Van Nimwegen et al (5947847). Ebstein discloses the elements of claim 9 (fig 1), however it fails to clearly disclose the use of a resistance mechanism. Van Nimwegen discloses the use of a resistance mechanism (fig 4A). Various types of basketball rims are well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed the rim assembly of Van Nimwegen with the apparatus of Ebstein in order to provide a break-away goal and increase the satisfaction of the user.

As to claims 10 and 11 : Van Nimwegen et al discloses a resistance mechanism disposed behind a front surface (fig 4A, springs).

As to claim 12 : See claim 9 rejection.

As to claim 13 : Ebstein et al discloses rim assembly attachment means that is behind a plane aligned with the front surface (fig 1).

As to claim 14 : Van Nimwegen et al discloses a resistance mechanism disposed behind a front surface (fig 4A, springs). The mechanism would naturally be connected to the goal support assembly.

As to claim 15 : Van Nimwegen et al discloses a resistance mechanism connected to the support assembly (fig 4A).

As to claim 16 : In as much claim structure provided Van Nimwegen et al discloses a resistance mechanism connected to the support (fig 4A).

As to claim 19 : Ebstein et al discloses an assembly that is adjustable (fig 1, items 50,52).

As to claim 20 : In as much claim structure provided Ebstein et al discloses a support structure that interconnects the support and backboard support assembly (fig 1, items).

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ebstein and Van Nimwegen as applied to claim 12 above, and further in view of Official Notice. Official Notice is taken that the use of portable basketball systems is well known in the art. It would have been obvious to one of ordinary skill in the art at the time of the invention to have employed a portable system with the apparatus of Ebstein in order to easily move and store the system.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-23 of copending Application No. 10/802,433. Although the conflicting claims are not identical, they are not patentably

distinct from each other because the claims in the copending application are simply broader than the instant claims and clearly "read" on the claims in the application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 571-272-4407. The examiner can normally be reached on Mon-Fri 8:30-5:00.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Greg Vidovich can be reached on 571-272-4415. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

5947847\*3970304\*3365196

Michael Chambers  
Examiner  
Art Unit 3711

July 25, 2005

  
GREGORY VIDOVICH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700